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2. Officers (§ 82*)—Subjects of Relief—Legal Remedy.—The validity of the appointment, election, or tenure of public officers cannot be questioned by a proceeding for an injunction; the questions being of a purely legal nature, cognizable only by courts of law.

[Ed. Note.—For other cases, see Officers, Cent. Dig. § 114; Dec. Dig. § 82.* 7 Va.-W. Va. Enc. Dig. 582.]

Appeal from Circuit Court Montgomery County.

Suit by H. M. Brown and others against W. T. Baldwin and others. From a decree for defendants, complainants appeal. Affirmed.

Longley & Jordan and *J. C. Wysor*, for appellants.

Johnson & Roop, *H. C. Tyler*, *Woods*, *Jackson & Smith*, *R. E. Byrd*, and *Scott*, *Buchanan & Cardwell*, for appellees.

DAMRON & KELLY v. CITIZENS' NAT. BANK OF CLINTWOOD.

Sept. 14, 1911.

[72 S. E. 153.]

Attachment (§ 87*)—Affidavit—Sufficiency.—Under Code 1904, § 2964, which requires affidavits in attachments to be made by the plaintiff, his agent, or attorney, affidavits of attachment in favor of a bank, signed by individuals as vice president and as director, without any explanation, are insufficient; it not appearing on the face of the affidavits that such officials are agents.

[Ed. Note.—For other cases, see Attachment, Cent. Dig. §§ 217-220; Dec. Dig. § 87.* 14 Va.-W. Va. Enc. Dig. 133.]

Appeal from Circuit Court, Dickenson County.

Attachment by the Citizens' National Bank of Clintwood against W. C. D. Sutherland and others, in which Damron & Kelly intervened as subsequent attaching creditors. From a judgment for complainants, interveners appeal. Reversed, and complainants' bill dismissed.

Chase & Daugherty, for appellants.

Skeen & Skeen and *W. H. Rouse*, for appellee.

WINGFIELD v. MCGHEE et. al.

Sept. 14, 1911.

[72 S. E. 154.]

1. Equity (§ 71*)—Defenses—Laches.—Mere delay in bringing an action is not always laches barring it.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 204-211; Dec. Dig. § 71.* 9 Va.-W. Va. Enc. Dig. 95.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

2. Equity (§ 340*)—Pleading—Verification—Effect as to Proof—Responsiveness of Answer.—The complaint in a suit to subject land to the payment of a legacy to plaintiff by the original owner alleged that the original owner devised the land to his daughters and devised \$300 to complainant to be paid by them, which was made a charge upon the land; that the daughters conveyed the land to defendant subject to complainant's claim, and that complainant had made frequent futile demands upon defendant for its payment; that the land is the only estate out of which the legacy can be satisfied, and the prayer was that it be sold and the proceeds applied to the payment of the legacy and for further relief. Held, that an allegation of the answer, which was under oath, that, if complainant ever had any claim upon the realty, it was settled during the lifetime of testator's daughters by an agreement between complainant and the daughters, was not responsive to the bill, but was new matter in avoidance of complainant's claim, so as to require defendant to prove such settlement by proof other than the sworn answer.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 697-700; Dec. Dig. § 340.* 1 Va.-W. Va. Enc. Dig. 406.]

3. Wills (§ 733*)—Legacies—Discharge.—The requirement of a will that a legacy charged upon land should be paid as soon as convenient meant that it should be paid within a reasonable time under the circumstances, and not that it should never be paid, or not paid until after the death of the devisees of the land.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1843; Dec. Dig. § 733.* 13 Va.-W. Va. Enc. Dig. 881, 891.]

4. Appeal and Error (§ 1036*)—Harmless Error—Absence of Parties.—A decree for complainant in a suit to have land sold to satisfy a legacy to complainant which was a charge upon it should not be reversed because of the failure to make the personal representatives of the devisees parties, where there was no demurrer or objection below on that ground, and it is not shown that such devisees left personalty out of which the legacy could be paid, even if it would be liable for its payment.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1036.* 1 Va.-W. Va. Enc. Dig. 549, et seq.]

Appeal from Circuit Court, Appomattox County.

Suit by Mary J. McGhee against Alexander S. Wingfield and others. From a decree for complainant, defendant named appeals. Affirmed.

H. D. Flood, for appellant.

G. E. Caskie and *A. H. Clement*, for appellees.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.